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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/616,047  | 07/07/2003  | Robert Lee Smith     | 0723                | 9786             |
| 21837   | 7590        | 11/24/2004           | EXAMINER            |                  |
| LORI M FRIEDMAN<br>300 BENTON VIEW DRIVE<br>PHILOMATH, OR 97370 |             |                      | PAK, JOHN D         |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 1616                |                  |

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/616,047

Applicant(s)

SMITH ET AL.

Examiner

JOHN PAK

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

Claims 1-27 are pending in this application.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8 and 24, drawn to an aqueous solution of hydrogen peroxide that is dispensed as a stable foam comprising hydrogen peroxide, about 1% of a surfactant and less than 1% of a stabilizer, packaged in a container equipped with a pump foaming chamber that produces foam without gas propellants, and method of treating topical wounds with said foam, classified in class 424, subclass 616, class 514, subclass 945, class 206, subclasses 210, 229.
- II. Claims 9-13 and 25, drawn to an aqueous solution of hydrogen peroxide that is dispensed as a spray mist comprising hydrogen peroxide, less than 1% of sodium pyrophosphate stabilizer, packaged in a container equipped with a sprayer that ejects a fine mist of hydrogen peroxide, and method of treating topical wounds with said spray mist, classified in class 128, subclasses 200.14+, class 424, subclass 616.
- III. Claims 14-18 and 26, drawn to a disposable towelette that is saturated with an aqueous solution of hydrogen peroxide that is packaged in a disposable wrapper, and method of treating topical wounds with said towelette, classified in class 424, subclasses 443-447, class 604, subclass

304, class 510, subclass 130, class 604, subclass 385.01, class 206, subclasses 210, 229.

- IV. Claims 19-23 and 27, drawn to an antiseptic gel composition of hydrogen peroxide comprising hydrogen peroxide, about 2% "hypromellolse" thickener, about 0.25% sodium pyrophosphate stabilizer, about 0.05% 2-amino-2-methyl-1-propanol neutralizing agent and the balance propylene glycol, and a method of treating topical wounds with said gel, classified in class 424, subclasses 484-488, class 514, subclasses 772.1, 944.

The four inventions as set forth above are patentably distinct by virtue of their separate and distinct physical forms and packaging means. In the field of providing antimicrobial treatments, the physical form and/or delivery means is a distinguishing feature. As evidenced by the separate classification of the four inventions, supra, the search for any one of the inventions would entail searching in places where no pertinent art to the other inventions would likely be found. Given the ubiquitous use of hydrogen peroxide as a sanitizing or disinfecting ingredient, reviewing documents for just one of the inventions in the patent search field and the literature search field would already be of sufficient burden. The added burden in having to search and examine more than one invention, under the facts of this application, would rise to a level that would be undue.

Therefore, for the reasons of distinctness and undue burden, the restriction requirement as set forth above is deemed to be proper.

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A telephone call was made to Ms. Lori Friedman on 11/9/2004 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Gary Kunz, can be reached on **(571)272-0887**.

The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

A handwritten signature in black ink, appearing to read 'John Pak', is written above the printed name.

JOHN PAK  
PRIMARY EXAMINER  
GROUP 1000